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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CHETAN THAKAR,

Plaintiff and Appellant,

v.

THE COMMUNITY HOSPITAL GROUP,  
INC., et al.,

Defendants and Respondents.

B236926

(Los Angeles County  
Super. Ct. No. YC064739)

APPEAL from an order of the Superior Court of Los Angeles County, Stuart M.  
Rice, Judge. Affirmed.

Chetan Thakar, in pro. per., for Plaintiff and Appellant.

Fisher & Phillips and Michelle Lee Flores for Defendants and Respondents.

## **INTRODUCTION**

This appeal arises from the trial court's order granting a motion to quash service of process for lack of personal jurisdiction in favor of specially-appearing defendants The Community Hospital Group, Inc., trading as JFK Medical Center (the hospital), Martin Gizzi, M.D., and Subramanian Hariharan, M.D. (collectively referred to herein as respondents). Because we conclude that plaintiff Chetan Thakar failed to meet his burden of proving facts justifying the exercise of jurisdiction, and in any case has forfeited for purposes of appeal his substantive attack on the motion as well as his challenge on timeliness grounds, we affirm the order granting the motion to quash.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff and appellant Chetan Thakar filed an unverified complaint on May 6, 2011. Therein, he alleged that in 1998 Drs. Gizzi and Hariharan wrongfully terminated him from the hospital's residency program in New Jersey. Those individuals purportedly conducted surveillance of him and interfered with his attempts to obtain a medical license and employment. Thakar tried to engage attorneys in order to sue the doctors, but was thwarted by their interference with his efforts to do so. At some point, Thakar moved to California. Thakar alleges that his employers in California were contacted by Drs. Gizzi and Hariharan and given false information, which eventually led to their conspiring with the doctors to terminate his employment and interfere with his rights in a multitude of ways. Thakar further alleges that the doctors conspired with defense counsel for his California employers, Robert Conti, to inflict further harm on him.

On July 19, 2011, respondents specially appeared for purposes of bringing a motion for an order quashing service of summons. Respondents asserted, supported by sworn declarations, that the superior court lacked personal jurisdiction due to their lack of sufficient contacts with the State of California: the individual respondents are residents of New Jersey and have only minor, incidental contact with the State of California; the

hospital is incorporated in New Jersey, provides patient care in that state only, and does not solicit business in California. Gizzi stated in his declaration: “I have never been in contact with any of [Thakar’s] subsequent employers. I have never initiated any communications with Thakar’s attorneys. I have never otherwise directed any actions toward California that could affect Thakar.” Similarly, Hariharan stated, “I have not communicated with Thakar, any of his attorneys or any of his subsequent employers since he left JFK in 1998. I have not directed any actions toward California that may have had any effect on Thakar.”

Thakar did not file written opposition to the motion to quash or present any evidence in opposition. At the hearing on August 26, 2011, Thakar asserted only that the motion to quash was untimely. He did not address the sufficiency of respondents’ contacts with California to justify the court’s exercise of personal jurisdiction. The trial court granted the motion to quash, finding the motion was timely and that it lacked personal jurisdiction over each of the respondents.

This appeal followed.

## **DISCUSSION**

### **I. Minimum Contacts**

In his opening brief on appeal, Thakar addresses for the first time the sufficiency of respondents’ contacts with the State of California to justify the court exercising personal jurisdiction over respondents. Respondents contend, and we agree, that Thakar has forfeited this issue by failing to argue it below. We reject Thakar’s contention that he is permitted to change the basis of his opposition to the motion to quash on appeal because the issue involves only a question of law presented on the facts appearing in the record. (Cf. *Ward v. Taggart* (1959) 51 Cal.2d 736, 742.) In reality, Thakar is attempting to assert new facts on appeal that are in dispute with those presented by respondents in support of their motion to quash. He is not permitted to do so. Thakar cannot now attempt, by making bare assertions of contrary facts or filing a new verified

complaint, to argue that respondents' contacts with Attorney Conti and others were sufficient to justify exercising personal jurisdiction over respondents, in order to overturn the court's granting of the motion to quash.

Moreover, we conclude that Thakar's lack of opposition below—other than on timeliness grounds—resulted in his undeniable failure to meet his burden of proof. When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden to prove, by a preponderance of the evidence, facts justifying the exercise of jurisdiction. Once the plaintiff establishes facts showing minimum contacts with the forum state, it becomes the defendant's burden to demonstrate that the exercise of jurisdiction would be unreasonable. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444-449 (*Vons*); *Anglo Irish Bank Corp., PLC v. Superior Court* (2008) 165 Cal.App.4th 969, 980.)

By failing to oppose the motion to quash except on timeliness grounds, Thakar did not meet his initial burden to prove by a preponderance of the evidence facts justifying the exercise of jurisdiction. In *Thomson v. Anderson* (2003) 113 Cal.App.4th 258 (*Thomson*), the court discussed a similar situation: “Whether [defendant] is subject to general personal jurisdiction is a close[] call, but the burden of proof resolves the issue in favor of affirming the order.<sup>[1]</sup> [Plaintiff] bore the burden of proof by a preponderance of the evidence to demonstrate [defendant] has sufficient minimum contacts with California to justify jurisdiction. (*Vons, supra*, 14 Cal.4th at p. 449; *DVI, Inc. v. Superior Court* [(2002)] 104 Cal.App.4th 1080, 1090.) [Plaintiff] submitted no evidence of his own to meet that burden. . . . [Defendant's] declaration . . . does not provide sufficient information to support a conclusion [defendant's] contacts with California are substantial, continuous, and systematic. By failing to submit any additional evidence, [plaintiff] failed to meet his burden of proving [defendant] is subject to general personal jurisdiction in California.” (*Thomson, supra*, 113 Cal.App.4th at pp. 270-271.)

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<sup>1</sup> By our citation of *Thomson*, we do not mean to suggest that the question of whether respondents are subject to general personal jurisdiction is a close call in the case now before us.

The *Thomson* court continued: “[Plaintiff] argues he alleged the moving defendants engaged in conduct supporting specific jurisdiction. *His allegations are not enough. [Plaintiff] had the burden of proving specific jurisdiction by a preponderance of the evidence, and his unverified complaint had no evidentiary value in meeting his burden.* (*DVI, Inc. v. Superior Court, supra*, 104 Cal.App.4th at pp. 1090-1091.) [Plaintiff] submitted no evidence supporting specific jurisdiction. The evidence presented by the moving defendants does not support specific jurisdiction: Their declarations established that no moving defendant ever has conducted business in California on behalf of [the corporate defendant], ever has communicated on its behalf with anyone in California, or ever has communicated with [plaintiff].” (*Thomson, supra*, 113 Cal.App.4th at p. 271, italics added.)

Similarly here, Thakar cannot rely on allegations in his operative unverified complaint or in a verified amended complaint he filed after filing his notice of appeal in this case to argue for the first time on appeal that facts exist to support a finding of personal jurisdiction. Statements made in the moving defendants’ declarations do not establish any of the defendants had sufficient general contact with California to justify exercise of jurisdiction. In addition, the individual defendants’ declarations categorically state that they have not directed any actions toward California that may have had any effect on Thakar. Because Thakar did not meet his burden of proving specific jurisdiction by a preponderance of evidence, we affirm the trial court’s order granting the motion to quash.

## **II. Timeliness**

The one basis upon which Thakar did oppose the motion to quash in the trial court, the alleged untimeliness of the motion, is not mentioned in his opening brief on appeal. We deem Thakar to have abandoned his challenge on that basis to the motion to quash. “Courts will ordinarily treat the appellant’s failure to raise an issue in his or her opening brief as a waiver of that challenge. [Citation.] . . . (See *Osornio v. Weingarten* (2004) 124 Cal.App.4th 304, 316, fn. 7: “Issues do not have a life of their own: if they are not

raised or supported by argument or citation to authority, we consider the issues waived.””)” (*Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685.) A belated attempt to address issues in a reply brief does not salvage otherwise abandoned issues. (*Ibid.*)

Finally, “we make clear that mere self-representation is not a ground for exceptionally lenient treatment. Except when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation.” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Under the law, one may act as his or her own attorney if he or she chooses. But when a litigant appears in propria persona, he or she is held to the same restrictive rules of procedure and evidence as an attorney—no different, no better, no worse. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639; *Monastero v. Los Angeles Transit Co.* (1955) 131 Cal.App.2d 156, 160-161.)

## **DISPOSITION**

The order granting the motion to quash is affirmed. Costs on appeal are awarded to respondents.

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SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.